

# INSPECTIONS AND APPEALS DEPARTMENT[481]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 63, “Residential Care Facilities for the Mentally Retarded,” Iowa Administrative Code.

The amendments strike the terms “mental retardation” and “mentally retarded” from the Department’s administrative rules and replace them with the terms “intellectually disabled” and “intellectual disabilities,” as appropriate. The amendments make corresponding changes in the Department’s administrative rules to implement sections 11 through 18 of 2012 Iowa Acts, chapter 1019.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 6, 2013, as **ARC 0600C**. While no comments were received, the Department has made several changes to the noticed amendments, including changing the definition of and references to “qualified mental retardation professional” to reflect a change in the federal definition of a “qualified intellectual disabilities professional.” These changes are reflected in Items 2 and 13, in new Items 38 and 39 and in renumbered Item 43. Additionally, rule 481—63.48(135C), which was proposed to be amended under Notice of Intended Action, has been rescinded as it is obsolete and no longer relevant.

The State Board of Health reviewed the proposed amendments at its January 9, 2013, meeting, and subsequently approved the amendments at its May 8, 2013, meeting.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 2012 Iowa Acts, chapter 1019.

These amendments shall become effective July 3, 2013.

The following amendments are adopted.

ITEM 1. Amend **481—Chapter 63**, title, as follows:

### RESIDENTIAL CARE FACILITIES FOR THE MENTALLY RETARDED INTELLECTUALLY DISABLED

ITEM 2. Amend subrules 63.1(2), 63.1(9) and 63.1(16) as follows:

**63.1(2)** “*Administrator*” means a person who administers, manages, supervises, and is in general administrative charge of a residential care facility for the ~~mentally retarded~~ intellectually disabled, whether or not such individual has an ownership interest in such facility, and whether or not the functions and duties are shared with one or more individuals.

**63.1(9)** “*Distinct part*” means a clearly identifiable area or section within a residential care facility for the ~~mentally retarded~~ intellectually disabled, consisting of at least a residential unit, wing, floor, or building containing contiguous rooms.

**63.1(16)** “*Qualified ~~mental retardation~~ intellectual disabilities professional*” means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and having one year’s experience working with the ~~mentally retarded~~ intellectually disabled.

ITEM 3. Amend rule 481—63.2(135C), introductory paragraph, as follows:

**481—63.2(135C) Variances.** Variances from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual residential care facility for the ~~mentally retarded~~ intellectually disabled. Variances will be reviewed at the discretion of the director of the department of inspections and appeals.

ITEM 4. Amend subrule 63.3(1), introductory paragraph, as follows:

**63.3(1)** Initial application and licensing. In order to obtain an initial residential care facility for the ~~mentally-retarded~~ intellectually disabled license; for a residential care facility for the ~~mentally-retarded~~ intellectually disabled which is currently licensed, the applicant must:

ITEM 5. Amend paragraph **63.3(1)“f”** as follows:

*f.* Submit the statutory fee for a residential care facility for the ~~mentally-retarded~~ intellectually disabled for which licensure application is made;

ITEM 6. Amend subrule 63.3(2), introductory paragraph, as follows:

**63.3(2)** In order for a facility not currently licensed as a residential care facility for the intellectually disabled to obtain an initial license as a residential care facility for the ~~mentally-retarded~~ intellectually disabled license ~~for a facility not currently licensed as a residential care facility for the mentally-retarded~~, the applicant must:

ITEM 7. Amend paragraphs **63.3(2)“d”** to **“f”** as follows:

*d.* Submit a floor plan of each floor of the residential care facility for the ~~mentally-retarded~~ intellectually disabled, drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which the room will be put and window and door locations;

*e.* Submit a photograph of the front and side elevation of the residential care facility for the ~~mentally-retarded~~ intellectually disabled;

*f.* Submit the statutory fee for a residential care facility for the ~~mentally-retarded~~ intellectually disabled;

ITEM 8. Amend subrule 63.3(3) as follows:

**63.3(3)** Renewal application. In order to obtain a renewal of the residential care facility for the ~~mentally-retarded~~ intellectually disabled license, the applicant must:

*a.* Submit the completed application form 30 days prior to annual license renewal date of residential care facility for the ~~mentally-retarded~~ intellectually disabled license;

*b.* Submit the statutory license fee for a residential care facility for the ~~mentally-retarded~~ intellectually disabled with the application for renewal;

*c.* Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations;

*d.* Submit appropriate changes in the résumé to reflect any changes in the resident care program and other services.

ITEM 9. Amend subrule 63.4(3) as follows:

**63.4(3)** The posted license shall accurately reflect the current status of the residential care facility for the ~~mentally-retarded~~ intellectually disabled. (III)

ITEM 10. Amend subrules 63.5(2) to 63.5(4) and 63.5(7) as follows:

**63.5(2)** Of any proposed change in the residential care facility for the ~~mentally-retarded's~~ intellectually disabled's functional operation or addition or deletion of required services; (III)

**63.5(3)** Thirty days before addition, alteration, or new construction is begun in the residential care facility for the ~~mentally-retarded~~ intellectually disabled, or on the premises; (III)

**63.5(4)** Thirty days in advance of closure of the residential care facility for the ~~mentally-retarded~~ intellectually disabled; (III)

**63.5(7)** Prior to the purchase, transfer, assignment, or lease of a residential care facility for the ~~mentally-retarded~~ intellectually disabled, the licensee shall:

*a.* Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)

*b.* Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least 30 days before the sale, transfer, assignment, or lease is completed; (III)

*c.* Submit a written authorization to the department permitting the department to release all information of whatever kind from the department's files concerning the licensee's residential care

facility for the ~~mentally-retarded~~ intellectually disabled to the named prospective purchaser, transferee, assignee, or lessee; (III)

ITEM 11. Amend subrule 63.5(8) as follows:

**63.5(8)** Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of a residential care facility for the ~~mentally-retarded~~ intellectually disabled, the department shall upon request, send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

ITEM 12. Amend rule 481—63.8(135C), introductory paragraph, as follows:

**481—63.8(135C) Administrator.** Each residential care facility for the ~~mentally-retarded~~ intellectually disabled shall have one person in charge, duly approved by the department or acting in a provisional capacity in accordance with these regulations. (III)

ITEM 13. Amend paragraphs **63.8(1)**“a,” “b” and “c” as follows:

a. Be a licensed nursing home administrator who is also a qualified ~~mental-retardation~~ intellectual disabilities professional; (III) or

b. Be a qualified ~~mental-retardation~~ intellectual disabilities professional with at least one year of experience in an administrative capacity in a health care facility; (III) or

c. Have completed a one-year educational training program approved by the department for residential care facility for the ~~mentally-retarded~~ intellectually disabled. (III)

ITEM 14. Amend subrule 63.8(2), introductory paragraph, as follows:

**63.8(2)** The administrator may act as an administrator for not more than two residential care facilities for the ~~mentally-retarded~~ intellectually disabled. (II)

ITEM 15. Amend subrule 63.8(4) as follows:

**63.8(4)** A provisional administrator may be appointed on a temporary basis by the residential care facility for the ~~mentally-retarded~~ intellectually disabled licensee to assume the administrative responsibilities for a residential care facility for the ~~mentally-retarded~~ intellectually disabled for a period not to exceed six months when, through no fault of its own, the home has lost its administrator and has not been able to replace the administrator, provided the department has been notified prior to the date of the administrator's appointment. (III)

ITEM 16. Amend paragraphs **63.8(6)**“a” and “c” as follows:

a. Assume the responsibility for the overall operation of the residential care facility for the ~~mentally-retarded~~ intellectually disabled; (III)

c. Establish written policies, which shall be available for review, for the operation of the residential care facility for the ~~mentally-retarded~~ intellectually disabled. (III)

ITEM 17. Amend paragraph **63.8(7)**“d” as follows:

d. Make available the residential care facility for the ~~mentally-retarded~~ intellectually disabled payroll records for departmental review as needed. (III)

ITEM 18. Amend subrules 63.9(8) and 63.9(9) as follows:

**63.9(8)** The residential care facility for the ~~mentally-retarded~~ intellectually disabled shall have established policies concerning the control, investigation, and prevention of infections within the facility. (III)

**63.9(9)** Each facility licensed as a residential care facility for the ~~mentally-retarded~~ intellectually disabled shall provide an organized continuous 24-hour program of care commensurate with the needs of the residents of the home and under the direction of an administrator whose combined training and supervisory experience is such as to ensure adequate and competent care. (III)

ITEM 19. Amend paragraphs **63.11(1)“a”** and **“b”** as follows:

a. No person with a current record of habitual alcohol intoxication or addiction to the use of drugs shall serve in a managerial role of a residential care facility for the ~~mentally-retarded~~ intellectually disabled. (II)

b. No person under the influence of alcohol or intoxicating drugs shall be permitted to provide services in a residential care facility for the ~~mentally-retarded~~ intellectually disabled. (II)

ITEM 20. Amend paragraphs **63.11(2)“a”** and **“b”** as follows:

a. The department shall establish on an individual facility basis the numbers and qualifications of the staff required in a residential care facility for the ~~mentally-retarded~~ intellectually disabled, using as its criteria the services being offered as indicated on the résumé program of care and, as required for individual care plans, the needs of the resident. (II, III)

b. Personnel in a residential care facility for the ~~mentally-retarded~~ intellectually disabled shall provide 24-hour coverage for residential care services for the ~~mentally-retarded~~ intellectually disabled. Personnel shall be up and dressed at all times in facilities ~~over~~ with more than 15 beds. In facilities with 15 or ~~less~~ fewer beds, personnel shall be up and dressed when residents are awake. (II, III)

ITEM 21. Amend paragraphs **63.13(1)“a”** and **“b,” “e” to “g” and “i”** as follows:

a. No resident who is in need of greater services than the facility can provide shall be admitted or retained in a residential care facility for the ~~mentally-retarded~~ intellectually disabled. (II, III)

b. No residential care facility for the ~~mentally-retarded~~ intellectually disabled shall admit more residents than the number of beds for which it is licensed. (II, III)

e. The admission of a resident to a residential care facility for the ~~mentally-retarded~~ intellectually disabled shall not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident’s legal representative. (III)

f. The admission of a resident shall not grant the residential care facility for the ~~mentally-retarded~~ intellectually disabled the authority or responsibility to manage the personal affairs of the resident except as may be necessary for the safety of the resident and safe and orderly management of the residential care facility for the ~~mentally-retarded~~ intellectually disabled as required by these rules. (III)

g. A residential care facility for the ~~mentally-retarded~~ intellectually disabled shall provide for the safekeeping of personal effects, funds, and other property of its residents. The facility may require that items of exceptional value or which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

i. Funds or properties received by the residential care facility for the ~~mentally-retarded~~ intellectually disabled, belonging to or due a resident, expendable for the resident’s account, shall be trust funds. (III)

ITEM 22. Amend paragraph **63.13(2)“b”** as follows:

b. Proper arrangements shall be made by the residential care facility for the ~~mentally-retarded~~ intellectually disabled for the welfare of the resident prior to transfer or discharge in the event of an emergency or inability to reach the next of kin or legal representative. (III)

ITEM 23. Amend subrules 63.15(1), 63.15(2), 63.15(6) and 63.15(7) as follows:

**63.15(1)** Each resident in a residential care facility for the ~~mentally-retarded~~ intellectually disabled shall have a designated licensed physician, who may be called when needed. (III)

**63.15(2)** Each resident admitted to a residential care facility for the ~~mentally-retarded~~ intellectually disabled shall have had a physical examination prior to admission. (II, III)

a. to c. No change.

**63.15(6)** Each resident shall be visited by or shall visit the resident’s physician at least annually. The year period shall be measured from the date of admission and is not to include preadmission physicals. Any required physician task or visit in a residential care facility for the ~~mentally-retarded~~ intellectually

disabled may also be performed by an advanced registered nurse practitioner, clinical nurse specialist, or physician assistant who is working in collaboration with the physician. (III)

**63.15(7)** Residents shall be admitted to a residential care facility for the ~~mentally-retarded~~ intellectually disabled only on a written order signed by a physician certifying that the individual being admitted requires no more than personal care and supervision but does not require nursing care. (III)

ITEM 24. Amend subrule 63.16(1) as follows:

**63.16(1)** The residential care facility for the ~~mentally-retarded~~ intellectually disabled personnel shall assist residents to obtain regular and emergency dental services. (III)

ITEM 25. Amend subrule 63.17(1), introductory paragraph, as follows:

**63.17(1)** *Resident record.* The licensee shall keep a permanent record on all residents admitted to a residential care facility for the ~~mentally-retarded~~ intellectually disabled with all entries current, dated, and signed. (III) The record shall include:

ITEM 26. Amend paragraph **63.17(2)“a”** as follows:

a. Each residential care facility for the ~~mentally-retarded~~ intellectually disabled shall maintain an incident record report and shall have available incident report forms. (III)

ITEM 27. Amend paragraph **63.18(1)“c”** as follows:

c. Bulk supplies of prescription drugs shall not be kept in a residential care facility for the ~~mentally-retarded~~ intellectually disabled unless a licensed pharmacy is established in the facility under the direct supervision and control of a pharmacist. (III)

ITEM 28. Amend paragraph **63.18(3)“f”** as follows:

f. In an ~~RCF/MR~~ RCF/ID facility licensed for 15 or fewer beds, a person who has successfully completed a state-approved medication manager course may administer medications.

ITEM 29. Amend subrule 63.21(2), introductory paragraph, as follows:

**63.21(2)** Each residential care facility for the ~~mentally-retarded~~ intellectually disabled shall provide an organized resident activity program for the group and for the individual resident which shall include suitable activities for evenings and weekends. (III)

ITEM 30. Amend paragraph **63.21(3)“a”** as follows:

a. Each residential care facility for the ~~mentally-retarded~~ intellectually disabled with over 15 beds shall employ a person to direct the activities program. (III)

ITEM 31. Amend rule 481—63.23(135C), introductory paragraph, as follows:

**481—63.23(135C) Safety.** The licensee of a residential care facility for the ~~mentally-retarded~~ intellectually disabled shall be responsible for the provision and maintenance of a safe environment for residents and personnel. (III)

ITEM 32. Amend paragraph **63.23(1)“a”** as follows:

a. All residential care facilities for the ~~mentally-retarded~~ intellectually disabled shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)

ITEM 33. Amend subrule 63.31(1) as follows:

**63.31(1)** A residential care facility for the ~~mentally-retarded~~ intellectually disabled shall be constructed in a neighborhood free from excessive noise, dirt, polluted or odorous air, or similar disturbances. (III)

ITEM 34. Amend paragraph **63.33(6)“c”** as follows:

c. A statement shall be signed by the resident, or responsible party, indicating an understanding of these rights and responsibilities, and shall be maintained in the record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party, if applicable. In the case of a ~~mentally-retarded~~ intellectually disabled resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

ITEM 35. Amend subrule 63.33(8), introductory paragraph, as follows:

**63.33(8)** Each resident or responsible party shall be fully informed by a physician of the resident's health and medical condition unless medically contraindicated (as documented by a physician in the resident's record). Each resident shall be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the ~~department of health and human services~~ U.S. Department of Health and Human Services' protection from research risks policy and then only upon the resident's informed written consent. Each resident has the right to refuse treatment except as provided by Iowa Code chapter 229. In the case of a confused or ~~mentally-retarded~~ intellectually disabled individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

ITEM 36. Amend paragraph **63.33(8)“c”** as follows:

c. If the physician determines or in the case of a confused or ~~mentally-retarded~~ intellectually disabled resident the responsible party determines that informing the resident of the resident's condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

ITEM 37. Amend subrule 63.36(3) as follows:

**63.36(3)** The facility shall keep on deposit personal funds over which the resident has control in accordance with Iowa Code section 135C.24(2). Should the resident request these funds, they shall be given to the resident on request with receipts maintained by the facility and a copy to the resident. In the case of a confused or ~~mentally-retarded~~ intellectually disabled resident, the resident's responsible party shall designate a method of disbursing the resident's funds. (II)

ITEM 38. Amend subrule 63.41(7) as follows:

**63.41(7)** Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified ~~mental-retardation~~ intellectual disabilities professional or facility administrator for refusing permission. (II)

ITEM 39. Amend rule 481—63.42(135C), introductory paragraph, as follows:

**481—63.42(135C) Resident activities.** Each resident may participate in activities of social, religious, and community groups at the resident's discretion unless contraindicated for reasons documented by the attending physician or qualified ~~mental-retardation~~ intellectual disabilities professional as appropriate in the resident's record. (II)

ITEM 40. Amend rule 481—63.47(135C), introductory paragraph, as follows:

**481—63.47(135C) Specialized license for three- to five-bed facilities.** The specialized license is for residential care facilities which serve persons with ~~mental-retardation~~ intellectual disabilities, chronic mental illness and other developmental disabilities having five or fewer residents as specified in Iowa Code section 225C.26. The facility is exempt from Iowa Code section 135.63. For this specialized license, all rules of 481—Chapter 63 apply except those which are deleted or amended, as indicated in subsequent rules.

ITEM 41. Amend paragraph **63.47(1)“f”** as follows:

f. Unless documented as appropriate within the residents' individual program plans, populations with primary diagnosis of chronic mental illness or ~~mental-retardation~~ intellectual disability/developmental disability may not be residents of the same specialized license facility. (II, III)

ITEM 42. Amend subrule 63.47(2) as follows:

**63.47(2)** The housing for persons with ~~mental retardation~~ intellectual disabilities, chronic mental illness, and other developmental disabilities, developed pursuant to this rule shall be eligible for funding utilized by licensed residential care facilities for the ~~mentally retarded~~ intellectually disabled.

ITEM 43. Amend subrule **63.47(7)**, numbered paragraphs “**2**,” “**3**” and “**28**,” as follows:

2. 63.8(1) “*a*” —Add “or qualified mental health professional (III)” after “qualified ~~mental retardation~~ intellectual disabilities professional”. (III)

3. 63.8(2) —Add “For purposes of the specialized license, the administrator may act as an administrator for not more than three residential care facilities for the ~~mentally retarded~~ intellectually disabled, chronic mentally ill, and developmentally disabled.” (II)

28. 63.33(8) “*c*” —Delete “in the case of a confused or ~~mentally retarded~~ intellectually disabled resident”. Change any reference of “responsible party” to “legal guardian”.

ITEM 44. Amend subrule 63.47(9), introductory paragraph, as follows:

**63.47(9)** “~~Mental retardation~~” “Intellectual disabilities” as used in this chapter shall also include the chronically mentally ill and the developmentally disabled for purposes of this specialized license.

ITEM 45. Amend paragraph **63.47(9)“a,”** introductory paragraph, as follows:

*a.* For the specialized license, “persons with ~~mental retardation~~ intellectual disabilities” means persons with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, manifested during the developmental period.

ITEM 46. Rescind and reserve rule **481—63.48(135C)**.

[Filed 5/8/13, effective 7/3/13]

[Published 5/29/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.